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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

FRANCHESCA FORD, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

vs.

CEC ENTERTAINMENT, INC., a Kansas corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 3:14-cv-01420-RS

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: August 11, 2016
Time: 1:30 p.m.
Place: Courtroom 3

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

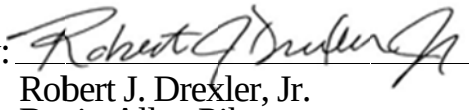
PLEASE TAKE NOTICE that on August 11, 2016 at 1:30 p.m., in Courtroom 3 of the above-captioned Court, located at 450 Golden Gate Avenue, San Francisco, California 94102, the Honorable Richard Seeborg presiding, Plaintiff Franchesca Ford will, and hereby does, move this Court for entry of an order and judgment granting final approval of the class action settlement and all agreed-upon terms therein. This Motion, unopposed by Defendant CEC Entertainment, Inc., seeks final approval of: (1) the Amended Joint Stipulation of Class Action Settlement and Release; (2) settlement payments to all Class Members who did not opt out; (3) a payment to the California Labor and Workforce Development Agency; and (4) and costs/expenses to the settlement administrator, Simpluris, Inc.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement; (3) the Declaration of Robert J. Drexler, Jr.; (4) the Declaration of Stephen Gomez; (5) the [Proposed] Order Granting Final Approval of the Class Action Settlement; (6) the [Proposed] Judgment; (7) the records, pleadings, and papers filed in this action; and (8) upon such other documentary and/or oral evidence as may be presented to the Court at the hearing.

Dated: July 19, 2016

Respectfully submitted,

Capstone Law APC

By: 

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I. INTRODUCTION

On March 28, 2016, the Court entered an order granting preliminary approval of the Amended Joint Stipulation of Class Action Settlement and Release,[1] and directing the Settlement Administrator to mail the Notice of Class Action Settlement[2] to all Class Members. Class Members were given 60 days to submit Requests for Exclusion or Objections to the Settlement. Now that the Response Deadline has passed, Plaintiff is pleased to report that: (1) not a single Class Member objected to the Settlement; (2) only 8 Class Members opted out of the Settlement Class (originally consisting of 10,526 members); (4) the average settlement payment is approximately $150; and (5) the highest payment is approximately $740. (Declaration of Stephen Gomez ["Gomez Decl."] ¶¶ 8-9, 11.)

Plaintiff Franchesca Ford now seeks final approval of this Settlement with Defendant CEC Entertainment, Inc. ("CEC" or "Defendant"). Defendant does not oppose this Motion for Final Approval of Class Action Settlement. The basic terms of the Settlement provide for the following:

(1) Conditional Certification of a Settlement Class defined as: All current and former hourly employees employed by Defendant in California in non-exempt positions at any time from January 27, 2010 through March 24, 2016.

(2) Monetary Relief: A Maximum Settlement Amount of $2,500,000. The Maximum Settlement Amount includes:

(a) A Net Settlement Amount (the Maximum Settlement Amount minus the requested Attorneys' Fees and Costs, Settlement Administration Costs, the payment to the California Labor and

[1] Hereinafter, "Settlement" or "Settlement Agreement." Unless indicated otherwise, all capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

[2] Hereinafter, the "Class Notice."

Workforce Development Agency ("LWDA"), and the requested Class Representative Enhancement Payment), which will be allocated to Class Members—automatically and without a claims process—on a pro-rata basis according to the number of weeks that each Class Member worked during the Class Period. The entire Net Settlement Amount will be disbursed to all Class Members who do not opt out of the Settlement Class. Class Members will have 120 days to cash their checks. If after 120 days, the sum of all cashed checks is less than 90% of the Net Settlement Amount, then the amount necessary to reach 90% of the Net Settlement Amount will be re-allocated on a pro-rata basis to those remaining Class Members who did not opt out. Funds representing uncashed checks of 10% or less of the Net Settlement Amount will revert to Defendant.

(b) Plaintiff will request, and Defendant will not oppose, an award of attorneys' fees and costs of $833,333 and $14,000, respectively, to Capstone Law APC ("Plaintiff's Counsel");

(c) Settlement Administration Costs of $69,043, to be paid to the class action settlement administrator Simpluris, Inc. ("Simpluris");

(d) A $3,750 payment to the California Labor Workforce Development Agency ("LWDA") pursuant to the Labor Code Private Attorneys General Act ("PAGA"); and

(e) Plaintiff will request, and Defendant will not oppose, a Class Representative Enhancement Payment of $5,000 to Franchesca Ford for her service on behalf of the Settlement Class and for a general release of all claims arising out of her employment with Defendant.

(3) Non-Monetary Relief: In addition to the above monetary relief, the

Settlement requires Defendant to implement a process to pay premium pay to hourly employees in California who are denied a meal period required under California law.

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class' behalf is fair, reasonable, and valuable. The Parties negotiated the Settlement at arm's length with helpful guidance from Michael Loeb of JAMS, an experienced and well-respected class action mediator. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). The proposed relief is arguably superior to the relief that the Class might have obtained after a successful trial because, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. Moreover, all 10,518 participating Class Members will, following final approval, be mailed their settlement checks without any further action required on their part.

Accordingly, given the Settlement's favorable terms and the manner in which these terms were negotiated and received by Class Members, Plaintiff respectfully requests that the Court grant this Motion for Final Approval of the Settlement Agreement and retain jurisdiction to enforce the Settlement.

II. FACTS AND PROCEDURE

A. Plaintiff Sued Defendant for Violations of the California Labor Code

Plaintiff Franchesca Ford was employed by CEC as a cashier at Defendant's Chuck E. Cheese restaurant in Roseville, California. Ms. Ford worked for CEC from August 2012 to February 2013. Plaintiff filed this action on January 27, 2014 in the Superior Court of the State of California for the County of San Francisco. Defendant removed the matter to the United States District Court for the Northern District of California on March 27, 2014.

Plaintiff chiefly alleges that CEC: (1) understaffs its California restaurants, and

due to insufficient coverage, employees are forced to work through their meal and rest breaks to serve customers; and (2) requires cashiers to be present when a manager counts their cash drawer at the end of every shift, and yet has no written policy or guideline indicating that these inspections should take place while clocked-in. Based on these allegations, Plaintiff alleges that CEC failed to pay Class Members for all hours worked, including overtime (Labor Code sections 1194, 1197, 1197.1, 510 and 1198), failed to pay all meal and rest period premiums owed (Labor Code sections 226.7 and 512), failed to timely pay all wages owed to employees during employment (Labor Code section 204), failed to timely pay all wages owed to employees upon termination (Labor Code sections 201 and 202), and issued inaccurate wage statements to employees (Labor Code section 226(a)).

B. Plaintiff Actively Engaged in the Discovery Process

Beginning shortly after the action was filed and continuing over the next 1.5 years, Plaintiff's Counsel thoroughly investigated and researched the claims in controversy, their defenses, and the developing body of law. The investigation included the exchange of information pursuant to formal and informal discovery methods. In response to this discovery, Plaintiff received, among other things, the following information and evidence with which to properly evaluate her claims: (1) Class Member demographic information (e.g., information bearing on the class size); (2) CEC's written cash handling procedures and timekeeping policies relevant to the cash register inspection claim; (3) CEC's written meal and rest period policies relevant to the meal and rest period claims; and (4) time and payroll records for putative Class Members, with entries dating from January 1, 2010 through December 31, 2014. Using this information, Plaintiff's Counsel were able to determine (or estimate), *inter alia*: (i) the average hourly rate of pay for Class Members; (ii) the total approximate number of Class Members who worked during the Class Period; (iii) the number of shifts with possible meal and rest periods violations; and (iv) the respective number of pay periods for purposes of calculating wage statement and PAGA penalties. (Declaration of Robert J.

Drexler, Jr. ["Drexler Decl."] ¶ 4.)

Overall, Plaintiff's Counsel performed an extensive investigation into the claims at issue, which included: (1) determining the suitability of the putative class representative, through interviews, background investigations, and analyses of her employment files and related records; (2) researching wage-and-hour class actions involving similar claims; (3) engaging in the discovery process; (4) obtaining and analyzing CEC's wage-and-hour policies and procedures; (5) researching the latest case law developments bearing on the theories of liability; (6) researching settlements in similar cases; (7) conducting discounted valuation analyses of claims; (8) drafting the mediation brief; (9) negotiating the terms of this Settlement; (10) finalizing the Joint Stipulation of Class Action Settlement and Release and Amended Joint Stipulation of Class Action Settlement and Release; and (11) and drafting preliminary and final approval papers. The sizeable document and data exchanges allowed Plaintiff's Counsel to assess the strengths and weaknesses of the claims against Defendant and the benefits of the proposed Settlement. (Drexler Decl. ¶ 5.)

C. The Parties Settled at Mediation

On May 6, 2015, and May 22, 2015, the Parties participated in full-day mediation sessions with Michael Loeb of JAMS, a respected mediator of wage and hour class actions. With Mr. Loeb's expert guidance, the Parties were able to negotiate a settlement of Plaintiff's claims. The terms of the Parties' settlement are now set forth in complete and final form in the Settlement Agreement. At all times, the Parties' negotiations were adversarial and non-collusive. The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue. (Drexler Decl. ¶ 6.)

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. Composition of the Settlement Class

The proposed Settlement Class consists of all current and former hourly employees employed by Defendant in California in non-exempt positions at any time from January 27, 2010 through March 24, 2016. (Amended Settlement Agreement ¶ 5.)

2. Settlement Consideration

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the Maximum Settlement Amount of $2,500,000. The Maximum Settlement Amount includes: (1) settlement payments to all Class Members who did not opt out; (2) Plaintiff's request for $833,333 in attorneys' fees and $14,000 in litigation costs/expenses; (3) a $3,750 payment to the LWDA; (4) settlement administration costs of $69,043; and (5) a requested Class Representative Enhancement Payment of $5,000 to Franchesca Ford for her service on behalf of the Settlement Class and for a general release of all claims arising out of her employment with Defendant. (Amended Settlement Agreement ¶¶ 14, 32-36.)

Subject to the Court approving Attorneys' Fees and Costs, the payment to the LWDA, Settlement Administration Costs, and the Class Representative Enhancement Payment, the entire Net Settlement Amount will be paid to Class Members who did not opt out, and without a claims process. (Amended Settlement Agreement ¶ 36.) Each Class Member's share of the settlement will be proportional to the total number of weeks he or she worked during the Class Period. (Settlement Agreement ¶¶ 28-29, 36.) The number of weeks worked was determined from Defendant's records, although Class Members were given an opportunity to challenge those records. (*Id.* at ¶ 43.)

In addition to the above monetary relief, the Settlement requires Defendant to implement a process to pay premium pay to hourly employees in California who are denied the opportunity to take a meal period as required under California law. (Amended Settlement Agreement ¶ 51.) This policy change will have a significant impact on current and future employees, and is intended to ensure greater compliance with the Labor Code.

3. Release by the Settlement Class

In exchange for the Maximum Settlement Amount, Plaintiff and Class Members who do not opt out will agree to release the Released Parties for the Released Claims. (Amended Settlement Agreement ¶ 21.) The Released Claims are those that accrued

during the period from January 27, 2010 through March 24, 2016. (*Id.* at ¶ 22.)

E. The Notice and Settlement Administration Process Were Completed Pursuant to the Court Order

As authorized by the Court's Order preliminarily approving the Settlement Agreement, the Parties engaged Simpluris to provide settlement administration services. (Gomez Decl. ¶ 2.) Simpluris' duties have included: (1) printing and mailing Class Notices, (2) receiving and logging undeliverable Class Notices, (3) processing Requests for Exclusion, (4) calculating settlement payments (this will include distribution of funds and tax-reporting following final approval), and (5) answering questions from Class Members. (*Id.*)

On March 29, 2016, Simpluris received the Class Notice prepared jointly by Plaintiff's Counsel and counsel for Defendant and approved by the Court. (Gomez Decl. ¶ 3.) The Class Notice summarized the Settlement's principal terms, provided Class Members with an estimate of how much they would be paid if the Settlement received final approval, and advised Class Members how to opt out or object to the Settlement. (*Id.*, Ex. A.)

Counsel for Defendant subsequently provided Simpluris with a mailing list (the "Class List") including each Class Member's full name, last known address, Social Security Number, and information necessary to calculate payments. (*Id.* at ¶ 3.) The mailing addresses contained in the Class List were processed and updated using the National Change of Address Database maintained by the U.S. Postal Service. (*Id.* at ¶ 4.) Class Notices were mailed on May 13, 2016. (*Id.*) In total, 745 Class Notices were returned to Simpluris as undeliverable and without forwarding addresses. Using skip-traces, Simpluris was able to find addresses for 573 of the returned Class Notices, which were promptly re-mailed by Simpluris following the skip-traces. (*Id.* at ¶ 5.) Ultimately, 172 Class Notices were unable to be delivered to the intended Class Members, an undeliverable rate of 1.63% (or 172 out of 10,526 Class Notices).

Class Members were given until July 12, 2016 to submit Requests for Exclusion

or Objections to the Settlement. Plaintiff is pleased to report that only 8 Class Members submitted timely and valid Requests for Exclusion and not a single Class Member objected to the Settlement. (Gomez Decl. ¶¶ 8-9.)

III. ARGUMENT

A. The Standard for Final Approval Has Been Met

A class action may only be settled, dismissed, or compromised with the Court's approval. Fed. R. Civ. Proc. 23(e). The process for court approval of a class action settlement is comprised of three principal stages:

Preliminary Approval: The proposed settlement agreement is preliminarily reviewed by the Court for fairness, adequacy, and reasonableness. If the Court believes the settlement falls within the range of reasonableness, such that proceeding to a formal fairness hearing is warranted, it orders notice of the settlement disseminated to the class. *See* Manual for Complex Litigation § 21.632 (4th ed. 2004).

Class Notice: Notice of the settlement is disseminated to the class, giving class members an opportunity to object to the settlement's terms or preserve their right to bring an individual action by opting out. *See id.*, § 21.633.

Final Approval: A formal fairness or final-approval hearing is held by the Court, at which class members can be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.[3] Following the hearing, the Court decides whether to approve the settlement and enter a final order and judgment. *See id.*, § 21.634.

[3] A proposed class action settlement may be approved if the Court, after allowing absent class members had an opportunity to be heard, finds that the settlement is "fair, reasonable, and adequate." In making this determination, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (*quoting Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)); *see also Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982) ("voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation . . . .").

The first two steps have been the completed. The Court has preliminarily reviewed the proposed settlement for fairness and found it to be within the range of reasonableness meriting court approval. (*See* March 28, 2016, Order Granting Preliminary Approval of Class Settlement, Dkt. No. 53.) In addition, the Settlement Administrator has notified Class Members of the proposed settlement and upcoming fairness hearing as directed by the Court. (*See generally* Gomez Decl.) Plaintiff now asks the Court to grant final approval of the proposed settlement.

The decision about whether to approve the proposed settlement is committed to the sound discretion of the trial judge, and will not be overturned except upon a strong showing of a clear abuse of discretion. *Hanlon*, 150 F.3d at 1026-1027. The Ninth Circuit has set forth a list of non-exclusive factors that a district court should consider in deciding whether to grant final approval, namely: (1) the strength of plaintiffs' case, and the risk, expense, complexity, and likely duration of further litigation; (2) the risk of maintaining class action status throughout the trial; (3) the amount offered in settlement; (4) the extent of discovery completed, and the stage of the proceedings; (5) the experience and views of counsel; and (6) the reaction of the class members to the proposed settlement. *Id.* at 963 (citing *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003)).

These factors, which are discussed below, confirm that the proposed Settlement is more than fair, reasonable, and adequate for Class Members. The Settlement provides considerable value; Class Members need not bear the risk and delay associated with trial proceedings to obtain these benefits; and the settlement has been met with substantial support and no opposition from Class Members.

B. The Proposed Settlement Is Reasonable Given the Strengths of Plaintiff's Claims and the Risks and Expense of Litigation

In assessing the probability and likelihood of success, "the district court's determination is nothing more than an amalgam of delicate balancing, gross approximations, and rough justice." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d

615, 625 (9th Cir. 1982) (internal quotation marks omitted). There is "no single formula" to be applied, but the court may presume that the parties' counsel and the mediator arrived at a reasonable range of settlement by considering plaintiff's likelihood of recovery. *Rodriguez v. West Pub. Corp*., 463 F.3d 948, 965 (9th Cir. 2009).

Plaintiff was cautiously optimistic about the chances of certifying the putative Class and of prevailing at trial. Nevertheless, Plaintiff recognizes that if the litigation had continued, she may have encountered significant legal and factual hurdles that could have prevented the Settlement Class from obtaining any recovery. For example, although a number of cases have found wage and hours actions to be especially amenable to class resolution,[4] a conspicuous few have gone the other way, finding that some of the very claims at issue here were not suitable for class adjudication because they raised too many individualized issues. *See Ali v. U.S.A. Cab Ltd.*, 176 Cal. App. 4th 1333, 1341 (2009) (denying certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, 2013 U.S. Dist. LEXIS 137792, at *30-41 (C.D. Cal. Sept. 20, 2013) (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of

[4] *See Brinker Restaurant Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1033 (2012) ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment . . . The theory of liability – that [the employer] has a uniform policy, and that that policy, measured against wage order requirements, allegedly violates the law - is by its nature a common question eminently suited for class treatment."). Litigation of wage and hour claims on class-wide bases (1) encourages the vigorous enforcement of wage laws (*Smith v. Super. Ct.*, 39 Cal. 4th 77, 82 (2006)); (2) "eliminates the possibility of repetitious litigation" (*Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th at 340); (3) affords small claimants a method of obtaining redress (*id.*); (4) "deter[s] and redress[es] alleged wrongdoing" (*Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010)); (5) "avoid[s] windfalls to defendants" (*Brinker*, 53 Cal. 4th at 1054); (6) avoids "inconsistent or varying adjudications" (*Aguiar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121, 129 (2006)); and (7) alleviates the concerns of employees about retaliation (*Gentry v. Super. Ct.*, 42 Cal. 4th 443, 462-63 (2007); *Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th at 1308). These policies are so strongly favored that "class certifications should not be denied [in wage and hour cases] so long as the absent class members' rights are adequately protected." *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 474 (1981).

uniform policy); *Jimenez v. Allstate Ins. Co.*, 2012 U.S. Dist. LEXIS 65328 (C.D. Cal. Apr. 18, 2012) (denying motion to certify meal and rest break classes based on employer's practice of understaffing and overworking employees); *Gonzalez v. Officemax N. Am.*, 2012 U.S. Dist. LEXIS 163853 (C.D. Cal. Nov. 5, 2012) (same); *Brown v. Fed. Express Corp.*, 249 F.R.D. 580, 587-88 (C.D. Cal. 2008) (denying certification of driver meal and rest period claims based on the predominance of individual issues); *Kenny v. Supercuts, Inc.*, 252 F.R.D. 641, 645 (N.D. Cal. 2008) (denying certification on meal periods claim); *Blackwell v. Skywest Airlines, Inc.*, 245 F.R.D. 453, 467-68 (S.D. Cal. 2007) (declining to certify class action because individual issues predominated when different employee stations provided different practices with respect to meal periods).

Some courts have denied certification even when an employer's policies are arguably unlawful on their face. For instance, in *Ordonez v. Radio Shack, Inc.*, 2013 U.S. Dist. LEXIS 7868, *35-41 (C.D. Cal. Jan. 17, 2013), the court denied certification even though the plaintiff submitted evidence of a facially unlawful policy regarding rest breaks. The *Ordonez* court concluded that the predominance and superiority elements were not met based on the employer's presentation of anecdotal evidence of lawful compliance notwithstanding the arguably unlawful policy. *Id.* at *38-40.

These diverse outcomes are vivid illustrations of the uncertainty of class certification in wage and hour cases. It follows that even a relatively strong case on the merits may not be certified. This reality added to the risk of continued litigation militated in favor of settlement. Indeed, it is usually preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. For example, if this action had settled following additional litigation, the settlement amount would likely have taken into account the additional costs incurred, and there may have been less available for Class Members.

Moreover, if the Court denied Plaintiff's forthcoming motion for class certification, the value of Plaintiff's case would have been considerably reduced, indeed,

Defendant would have likely offered *no* money to settle the class-wide claims. As a general matter, the value of class claims is largely dependent on the size of a putative class. Prior to certification, there is no actual class, only a prospective class. The value of the claims asserted on their behalf is estimated by calculating the maximum damages in the aggregate based on the available evidence and then discounting by the chances of the court denying certification, the chances of losing at trial, and the chances of winning at trial but losing on appeal. Naturally, if the court denies certification, there is no class and to the extent any value remains in the case, it derives almost entirely from the value of a plaintiff's individual claims. And, of course, even if a motion for class certification is granted there is the risk of decertification and the possibility that the claims will fail on their merits.

In summary, although Plaintiff and her counsel maintained a strong belief in the underlying merits of the claims, they also acknowledge the significant challenges posed by continued litigation through certification and/or at trial. Accordingly, when balanced against the risk and expense of continued litigation, the settlement is fair, adequate, and reasonable. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes").

C. The Settlement Was Negotiated at Arm's-Length By Experienced Counsel With the Guidance of an Expert Mediator

The Parties participated in mediation with Michael Loeb, a respected mediator of wage and hour class actions. Mr. Loeb helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement), *In re Atmel Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 U.S. Dist. LEXIS 145551 (N.D. Cal. June 25, 2008) (same); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement

in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."). At all times, the Parties' negotiations were adversarial and non-collusive.

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff is represented by Capstone Law APC. Capstone, which seeks appointment as Class Counsel, employs seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Drexler Decl. ¶¶ 7-12.)

Defendant is represented by Akin Gump Strauss Hauer & Feld, a nationally recognized firm with a prominent wage and hour defense practice.

D. Plaintiff Conducted a Thorough Investigation of the Factual and Legal Issues

As set forth in greater detail above, based on their analysis of documents produced by Defendant (including putative class member time and wage records), Plaintiff's Counsel were able to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Drexler Decl. ¶¶ 4-6.)

By engaging in a thorough investigation, evaluation of Plaintiff's claims, Plaintiff's Counsel can knowledgeably opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, and various defenses asserted by Defendant.

E. The Settlement Class Has Responded Positively to the Settlement

The Class Members' response demonstrates their support for this settlement. Only 8 Class Members opted out of the Settlement Class and not a single Class Member objected to the Settlement. (Gomez Decl. ¶¶ 8-9.) A low number of opt outs and

objections is a strong indicator that a settlement is fair and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152-53 (2000) (class response favorable where "[a] mere 80 of the 5,454 national class members elected to opt out [(1.5% of the entire Class)] and . . . [a] total of nine members . . . objected to the settlement); *Churchill Village, LLC v. General Electric*, 361 F.3d 566 (9th Cir. 2004) (affirming settlement approval where 45 of approximately 90,000 notified class members objected and 500 opted out). The Class Members' response here—both in the low rate of opt-outs and the complete absence of objectors—compares favorably to those cases and warrants final approval.

The average Class Member recovery of $150 compares favorably to other wage and hour class action settlements for similar claims on behalf of non-exempt employees. *See, e.g., See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately $145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately $65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately $20).

F. The Proposed PAGA Payment Is Reasonable

Pursuant to the Settlement Agreement, $5,000 from the Maximum Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% ($3,750) will be paid directly to the LWDA. (Amended Settlement Agreement ¶ 35.) This result

was reached after good-faith negotiation between the parties. Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g.*, *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.").

G. The Requested Payment to the Settlement Administrator Is Reasonable and Should Receive Final Approval

Plaintiff requests final approval of settlement administration costs in the amount of $69,043. (Gomez Decl. ¶ 13.) Simpluris has promptly and properly distributed the Class Notice to all Class Members and completed its duties in accordance with the settlement terms and the Court's preliminary approval Order. (*See generally* Gomez Decl.) Accordingly, the $69,043 payment is fair and reasonable and should be accorded final approval along with the rest of the Settlement terms.

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of a case that provides relief that likely would never have been realized but for this class action. Accordingly, final approval of the Settlement should be granted.

Dated: July 19, 2016

Respectfully submitted,

Capstone Law APC

By: _____

Robert J. Drexler, Jr.
Bevin Allen Pike
Jonathan Lee

Attorneys for Plaintiff Franchesca Ford